

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Leslie Jay Shayne,

Plaintiff,

vs.

Discover Bank,

Defendant.

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Civil Action No. 8:18-3057-BHH

OPINION AND ORDER

This matter is before the Court on Defendant's Motion to Dismiss, Motion to Sever and Remand, and Motion to Quash (ECF Nos. 8, 9, and 11) and Plaintiff's Motion for a Hearing (ECF No. 29). In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), (D.S.C.), this matter was referred to United States Magistrate Judge Kevin F. McDonald for pre-trial proceedings. On February 13, 2019, the Magistrate Judge issued a Report and Recommendation ("Report") recommending that Defendant's Motion to Dismiss and Motion to Sever and Remand (ECF Nos. 8 & 9) be granted, Defendant's Motion to Quash (ECF No. 11) be found moot, and Plaintiff's Motion for a Hearing (ECF No. 29) be denied. The Magistrate Judge advised the parties of the procedures and requirements for filing objections to the Report. No objections were filed and the time for doing so expired on March 4, 2019.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination only of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole

or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of specific objections, the Court reviews the matter only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’”) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Here, because no objections were filed, the Court has reviewed the record, the applicable law, and the findings and recommendations of the Magistrate Judge for clear error. After review, the Court finds no error and agrees with the Magistrate Judge’s recommendation to:

- (1) grant Defendant’s Motion to Sever and Remand (ECF No. 9) and sever and remand the pre-existing Conservatorship Proceeding to the South Carolina Probate Court;
- (2) grant Defendant’s Motion to Dismiss (ECF No. 8);
- (3) deny Defendant’s Motion to Quash (ECF No. 11) as moot; and
- (4) deny Plaintiff’s Motion for a Hearing (29).

CONCLUSION

For the reasons set forth above, the Court adopts and incorporates herein the Report and Recommendation (ECF No. 47) of the Magistrate Judge. The Court remands the pre-existing Conservatorship Proceeding to the South Carolina Probate Court.

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

April 24, 2019
Greenville, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.